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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re C.M. et al., Persons Coming Under  
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

T.M. et al.,

Defendants and Appellants.

D066556

(Super. Ct. Nos. J518288C, J518288D &  
J518288E)

APPEAL from a judgment of the Superior Court of San Diego County, Kimberlee  
Lagotta, Judge. Affirmed.

Valerie N. Lankford, under appointment by the Court of Appeal, for Defendant  
and Appellant T.M.

Nicole Williams, under appointment by the Court of Appeal, for Defendant and  
Appellant S.M.

Thomas E. Montgomery, County Counsel, John E. Phillips, Chief Deputy County Counsel, and Paula J. Roach, Deputy County Counsel, for Plaintiff and Respondent.

The three minor children who are the subject of this appeal, Cha., J., and D. are part of a family of six siblings, all of whom are dependent children within the meaning of Welfare and Institutions Code section 300.<sup>1</sup> The long-term caregivers for the children, the A. family, would like to adopt the oldest child, Cha. Because they claim J. has acted out sexually, and because of issues related to the A.'s ability to appropriately manage him, another family has agreed to adopt J. and D. Given these circumstances, the trial court did not err in terminating the parental rights of the children's biological parents and selecting adoption as a permanent plan for the three children.

We reject the biological parents' contention that, under section 366.26, subdivision (c)(1)(B)(v), the children's sibling relationship prevented the trial court from terminating the parents' rights and adopting a plan that would place the children in separate homes. The record here shows that there were no other practical alternatives to separate placements and that the children's need for permanent placements far outweighed maintenance of their sibling bond in the same household.

## FACTUAL AND PROCEDURAL HISTORY

### A. Petition and Detention

This case originated in November 2011, when defendants and appellants T.M. (father) and S.M. (mother) had custody of five of their biological children. At that point, plaintiff and respondent San Diego County Health and Human Services Agency (the

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

agency) filed a petition alleging that domestic violence between father and mother, and mother's mental illness, made the five children dependents within the meaning of section 300, subdivision (b). The trial court found jurisdiction and detained the children outside mother and father's home.

Following detention of the children, father did not successfully reunify. Father cursed at the visitation center's staff, threatened and intimidated them, and engaged in behavior that required the assistance of law enforcement. He also missed visitation and a number of drug tests. On March 18, 2013, the trial court terminated father's reunification services.

During the course of the dependency proceedings, mother's psychiatrist diagnosed her with schizoaffective disorder, bipolar type severe with psychotic features and posttraumatic stress disorder. Although the agency found that both parents were bonded with their children and loved them, neither parent was able to provide them with adequate housing, structure or a safe environment. On June 10, 2013, the trial court terminated mother's reunification services. Eventually, their oldest child, T., who was almost 13 when the petition was filed, was placed in a licensed group home. The younger four children, 10-year-old Chn., 7-year-old Cha., 3-year-old J., and 9-month-old D., were placed together in a licensed foster home with the A.'s.

#### B. Permanent Planning

The contested permanent planning hearing under section 366.26 was conducted in August 2014, almost three years after the petition was filed. By then, father and mother had a sixth child, E., who had also been made a dependent and placed in the A.'s home.

The agency's report and evidence presented at the hearing demonstrated that the

placement of all five children with the A.'s had not been successful and, in important respects, had harmed the children's relationship with each other. Chn. and Cha. indicated to social workers that they wanted to stay with the A.'s but that they did not want to live with J. For his part, J. did not want to stay in the A.'s home and did not want to be placed with any sibling other than E.

The agency recommended that Chn. be made a ward of the A.'s, which was his preference, and that Cha. be adopted by the A.'s, which was her preference. The A.'s were willing to act in both capacities.

Although the agency had initially recommended that J. and D. also be adopted by the A.'s, shortly before the permanent planning hearing the agency discovered information which led it to conclude that the A.'s home was not appropriate for the three younger children and, in particular, J. Before the permanent planning hearing, the A.'s reported J. had been acting out sexually with D. However, after some investigation, the agency learned that in the A.'s home J. had been identified as the "bad one"; the agency also had some concern that D. may have been coached with respect to her report about sexual contact with J. More importantly, the agency had reservations about the A.'s ability to adequately supervise three young children in their home. Accordingly, the agency had moved the three younger children to another foster-adopt home and was recommending they be adopted by that family.

The agency reported that it had attempted to locate another family that would be willing to take all five children and that its efforts had been unsuccessful. In explaining the agency's recommendation that the children be placed separately, the adoptions worker gave the following testimony: "The only concern that I have, I guess I have a lot of

remorse for, not maybe remorse, but I want the kids to continue to have a sibling relationship and I did look for a home that would actually be ideal for all five siblings and there was none in the County of San Diego.

"Q So you think it would be best for all the children to be placed in one home?

"A I would think it would have been best, however, due to other concerns with [Chn.], as well as [Cha.], I think that within that sibling group there's been a lot of damage done within each other as well.

"There was one incident where I, [J.] -- I'm sorry [Chn.] went to a visit with mom and he injured [J.] three times in my presence. And [J.] would tell me that he was being hit by either usually by [Chn.], and sometimes it was horse playing around, playing around, but I just felt that there was lack of supervision with the kids.

"There was also another incident that I was informed where [Chn.] was -- [Cha.] and [Chn.] were left in the room with [E.] and when [Mrs. A.] returned back to the room [Chn.] had a pillow over [E.]'s face. This was two months ago, so there was ongoing issues of lack of supervision by [Mrs. A.]"

Although the adoptions worker had serious concerns about the A.'s home, because both Chn. and Cha. were older and had been with the A.'s for almost three years and wanted to stay there, she felt that, for them, stability in the A.'s home was the best option under the circumstances. Both the A.'s and the prospective adoptive parents of J., D. and E. agreed they would maintain contact between the siblings.

### C. Trial Court Ruling

The trial court terminated the parental rights of both father and mother over Cha., J. and D. The trial court found that neither the parental bond exception set forth in

section 366.26, subdivision (c)(1)(B)(i) nor the sibling bond exception set forth in section 366.26, subdivision (c)(1)(B)(v) applied. In making its ruling on these exceptions, the trial court stated: "[T]he termination of parental rights and any detriment that would fall therefrom does not outweigh the benefits of adoption with respect to all four minors. The sibling bond in this case, I understand the arguments of all sides with respect to [Chn.] and [Cha.] in one licensed foster home, where they've been placed since December 14, 2011.

"And [J.] and [D.] are in a separate foster home with sibling [E.], which is a more recent placement. [I]t's clear on the record at page 8 of the social worker's .26 report . . . that the respective caregivers for all siblings, including [E.], are committed to facilitating visits between the siblings and, therefore, I do not find that the sibling bond exception applies in this case."

Because Chn. was made a ward of the A.'s, the trial court did not terminate father's and mother's parental rights over him; no order was made with respect to E. because father and mother were still attempting to reunify with her.

Father and mother filed timely notices of appeal from the trial court's orders terminating their parental rights over Cha., J. and D.

## DISCUSSION

Because in explaining its ruling terminating their parental rights the trial court made reference to the agreement of the two adoptive families to maintain contact between the siblings, on appeal father and mother contend the trial court erred in finding the sibling exception to the termination of parental rights, otherwise required by section 366.26, subdivision (c), was not applicable. We disagree. The record here makes it

abundantly clear the trial court had little choice other than to order separate placements for the three siblings. Given this circumstance, the trial court's remarks about the commitment of the adoptive families to maintain contact between the siblings were not a material part of its ruling.

There is no dispute that, at the time of the permanent planning hearing, the agency no longer had confidence in the A.'s ability to care for the three younger siblings. The agency's views about that placement appear well founded. In particular, continued placement of J. in the A.'s home appeared to pose some risk to him, as well as to D. and E. There is also no dispute in the record that there were no other placements available to the agency for a five-child sibling group ranging in age from an infant to young adolescents.

Because the A.'s were no longer suitable for all the children, and because there were no other placement options that would keep all five children together, the siblings were of necessity going to be separated. In this factual context, it is not reasonable to interpret the trial court's statement as expressing any determination that the promise of continued contact somehow justified separating the children; rather, as the agency asserts, in light of the circumstances presented to it, the trial court's reference to future contact between the siblings was no more than a hopeful observation with respect to a very difficult and regrettable situation.

The record here, which left the trial court with no real practical alternative other than approving separate placements, is in marked contrast to the situations confronting the courts in *In re C.B.* (2010) 190 Cal.App.4th 102, 128-129 (*C.B.*) and *In re S.B.* (2008) 164 Cal.App.4th 289, 300 (*S.B.*), upon which father and mother rely. In those cases,

although there was no doubt that the dependent children had meaningful and important bonds with their natural parents within the meaning of the exception provided by section 366.26, subdivision (c)(1)(B)(i), the trial courts made statements which suggested that the agreement of adoptive parents to facilitate contact with the children was relevant in determining whether the benefits of adoption outweighed the value of the parental bonds and the detriment severing those bonds would cause. (*C.B.*, at pp. 128-129; *S.B.*, at p. 300.) Both cases held that it was error to ignore application of the parental bond exception on the grounds the adoptive parents had made an unenforceable commitment to maintain contact. (*Ibid.*) Here, of course, the record shows that the sibling exception was not applied, not because of any promise by the adoptive parents to maintain contact, but because there was no placement available that would preserve the sibling relationship.

In important respects, the situation facing the trial court was similar to the one we considered in *In re Valerie A.* (2007) 152 Cal.App.4th 987, 1014 (*Valerie*). There, reunification services had been terminated with respect to two siblings, who were twins, and the trial court terminated the mother's parental rights. The record showed that there was a great deal of hostility and animosity between the twins' adoptive mother, who was part of the children's extended family, and the maternal grandmother, who had custody of a third sibling. The hostility had reached the point that visitation between the three siblings was suspended. On appeal, the mother of the siblings argued that terminating her rights as to the twins would damage the older sibling's relationship with the twins. In rejecting application of the sibling relationship exception, we stated: "This court has previously stated that the application of this exception will be rare, particularly when the proceedings concern young children whose needs for a competent, caring and stable



parent are paramount. [Citation.] Here, the record shows there would not be substantial interference with the children's sibling relationships, considering the nature and extent of those relationships. The children's best interests were served by adoption, and the selection of an alternative permanency plan would not resolve the family hostilities that had jeopardized the children's safety and prevented continued sibling visitation. We conclude that the court did not err when it found the children were adoptable and no exceptions applied to preclude termination of parental rights. (§ 366.26, subd. (c)(1).)" (*Ibid.*)

Here, the practical circumstance that interfered with the siblings' relationship was not, as in *Valerie*, hostility within an extended family; rather, as we have discussed, the practical circumstance that was operating here, but to the same effect, was absence of a home that was able to care for such a large group of siblings on a long-term basis. Even if the trial court expressly found a strong sibling bond, as in *Valerie*, each child's need for the permanency adoption will provide far outweighs the value of a sibling relationship, which, in any event, is going to be subject to separate placements. Given these circumstances, as in *Valerie*, the trial court did not err in finding that the children were adoptable and that no exception applied.

DISPOSITION

The orders appealed from are affirmed.

BENKE, Acting P. J.

WE CONCUR:

HALLER, J.

O'ROURKE, J.